

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) Case No. 3:15-CR-0438-JO
5 v.) April 17, 2017
6 WINSTON SHROUT,)
7 Defendant.)
8 _____) Portland, Oregon

9 TRANSCRIPT OF PROCEEDINGS

10 (In Chambers Conference)

11 BEFORE THE HONORABLE ROBERT E. JONES, SENIOR JUDGE
12
13

14 APPEARANCES:

15 FOR THE PLAINTIFF:

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22
23 COURT REPORTER:

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1 (Monday, April 17, 2017; 10:30 a.m.)

2
3 P R O C E E D I N G S
4

5 THE COURT: Put on the record that the defendant,
6 Shrout, has waived appearance today.

7 Since we're just going to talk about things --

8 And thank you for working hard to get this thing
9 together. And your paralegal is always welcome to join us --

10 MR. INIGUEZ: Okay.

11 THE COURT: -- and be with you at the trial, at
12 counsel table.

13 MR. INIGUEZ: Thank you, Judge. Yeah.

14 THE COURT: Okay. We'll start with the -- I think
15 we'll do the easy stuff first.

16 As I mentioned before, I'll conduct the voir dire for
17 both sides. I have the requested questions. I won't ask them
18 in that form, but I'll cover their experiences.

19 The -- the other thing is the preliminary
20 instructions -- you've done a great job in agreeing on almost
21 everything except for -- for the -- are you -- tell me what
22 your objections are to the Government's --

23 MR. INIGUEZ: So, Judge, they have two instructions.
24 I believe it's two that are disputed.

25 THE COURT: Yeah, well --

1 MR. INIGUEZ: I'll start with the second one. The
2 one they proposed is -- Government's proposed instruction 2 is
3 on page 3 of their document. Deliberate ignorance.

4 THE COURT: Yeah.

5 MR. INIGUEZ: The problem there, I think, Judge, is
6 that goes directly against the idea of a sincerely held good
7 faith belief. You know, here, this is instructing that the
8 defendant acted knowingly if he was aware of a high probability
9 that a fact was true and deliberately avoided learning the
10 truth.

11 The problem here, of course, is for the good faith
12 defense under *Cheek*, you can have an irrational, unreasonable
13 misunderstanding or mistake of the law. And I think -- you
14 know, I -- I look for cases in which a *Cheek* instruction is
15 given, as well as deliberate ignorance, and I didn't find any.
16 And I think that's the reason why, is that it seems to be
17 countered to the idea that you can -- I understand the
18 Government, I guess, saying deliberately. But you can be
19 unreasonable, you can be irrational in your belief, as long as
20 it's sincerely held. So I think this just sort of -- if not
21 undercuts it, it directly conflicts with that.

22 THE COURT: Do you have a suggested alternative?

23 MR. INIGUEZ: I think this instruction just shouldn't
24 be given.

25 THE COURT: Okay. Defendant acted knowingly if you

1 find beyond a reasonable doubt that the defendant was aware of
2 a high probability that a fact was true and deliberately
3 avoided learning the truth.

4 MR. LANGSTON: And, your Honor, if I may.

5 THE COURT: Yeah.

6 MR. LANGSTON: It may be premature to address this
7 instruction. We included it as one of the possible
8 instructions, and I know your general practice is to give
9 this -- give the instructions to the jury prior to the
10 evidence. We understand, under Ninth Circuit law, we would
11 only be entitled to this depending on what defense is set
12 forth.

13 However, particularly with the 514 count, we
14 anticipate that it likely will be relevant. But perhaps it's
15 better to table this until the conclusion of the evidence.

16 THE COURT: I think that's probably true. And I
17 would anticipate saying -- him saying that he truly believed
18 what he was doing was lawful and he did so openly and to all
19 comers. And so you would have to have some evidence that he
20 avoided learning the truth and he was reading the things he
21 wanted to.

22 But you have some admissions -- so I'll put a big
23 question mark on that. I doubt that I'll give it.

24 MR. INIGUEZ: Okay, Judge. Because I think it gets a
25 little too metaphysical, I think, for the jury really to be

1 thinking, okay, this guy honestly, sincerely believed this
2 stuff --

3 THE COURT: It's metaphysical enough for -- to act
4 intentionally to defraud, and yet willingness becomes an issue
5 for some counts and not others.

6 We've had an -- another instruction?

7 MR. INIGUEZ: The other one is the Government's No. 1
8 instruction.

9 And this one, Judge, I think we have to look at it in
10 concert with my proposed -- Mr. Shrout's proposed instruction,
11 which is No. 2. This is essentially competing versions of the
12 same instruction.

13 What I would -- what I would tell you is my
14 instruction -- No. 2 -- I verbatim quoted the Ninth Circuit
15 cases that we're talking about -- or that we're relying on;
16 whereas, the Government is kind of -- what? Using their own
17 language to synopsise, in a way, what the cases are saying.
18 And then I think actually going a little further than the cases
19 would warrant.

20 For example, their Instruction No. 1, after you list
21 these indicia or hallmarks of -- of what would be, you know,
22 genuine financial instruments, they say:

23 Such obligations are illegal, regardless of their
24 status as negotiable or nonnegotiable.

25 Well, that's an overstatement of the cases, I would

1 say.

2 We're talking, here, about *Howick* case and the *Salman*
3 case. And in -- in *Howick*, there was a negotiable instrument.
4 It was a currency. In the other case, it was -- that was --
5 the document was actually marked "nonnegotiable."

6 What the -- what the courts are saying is that you
7 can't rely on one of these indicia. One indicia won't take it
8 either way. Right? It doesn't win the day for you or -- you
9 have to look at the entire document and see what the indicia of
10 genuineness are.

11 So although in *Salman* they did say, "This document,
12 even though it's nonnegotiable that doesn't win the day for the
13 defendant," it's a little too much to say simply that they're
14 illegal regardless of whether they're negotiable or not. It's
15 one factor to consider. And that's why, you know, the
16 paragraph right above talks about those various factors. So I
17 would certainly want that out.

18 Like I say, I just -- in my instruction, I tried to
19 go with exactly what the court said so that there wasn't an
20 issue here. And so I would ask the Court to instruct on
21 Mr. Shrout's No. 2, rather than the Government's No. 1.

22 The other problem I have with the Government's
23 instruction is that it then is the intent to defraud, right?
24 These are supposed to be definitions. And it does define -- it
25 goes on to define intent to defraud. And it seems like they

1 are adding, maybe, one sentence here on good faith. Whereas I
2 think -- and I have proposed -- a separate instruction that
3 there be a good faith defense to this.

4 So I don't think it's correct to just toss it out in
5 the -- you know, in these -- in this definitional section. The
6 Government says, simply:

7 Further, in determining whether he acted with
8 intent to defraud, you may consider whether he had
9 an honest, good faith belief in the authenticity
10 of the documents.

11 THE COURT: Don't go too fast.

12 MR. INIGUEZ: Okay. So that sentence there.

13 And then the -- the next sentence, one who acts with
14 honest intention is not chargeable with fraudulent intent.

15 I mean, if we were actually looking at this
16 instruction, I would say, well, you know, it's an open issue.
17 It's whether you've charged somebody who has an honest
18 intention. I take issue with the language here.

19 But I think, just as for the tax charges, we have the
20 instruction on the elements of the offense, and then you have
21 the defense, the *Cheek* instruction.

22 Here, I agree -- you were the other day noting that
23 willfulness is an element of the *Cheek* defense but good faith
24 is a separate defense to intent to defraud. And I think the
25 parties are in agreement on that.

1 So what I would propose is the instruction that Judge
2 Simon gave in the *Stephens* case. And that's what I gave you,
3 as well as the Ninth Circuit's opinion in *Molinaro* where that
4 came from. And I think that's just the better form to have the
5 514 instruction on elements, and then the next good faith
6 defense; just as we're dealing with the tax instruction on the
7 elements for 7203 and then willfulness and the *Cheek* defense
8 right there.

9 THE COURT: Response?

10 MR. LANGSTON: Yes, your Honor.

11 I mean, I think the Ninth Circuit case law -- I'll
12 talk about good faith first -- is fairly clear that once you
13 tell the jury to act with intent to defraud means an act with
14 intent to deceive or cheat, and give that specific intent, you
15 actually don't need a good faith instruction at all.

16 Now, the Government's included one here, in part
17 because the jury is going to hear the *Cheek* instruction with
18 respect to tax counts. And we think this provides
19 clarification with respect to the different standard for 514.

20 We think we've clearly stated the law there and
21 provided the defendant -- and laid out the good faith
22 instruction as part of that. I think to add a separate
23 instruction as to good faith muddies the waters more than just
24 as part of the definition of intent to defraud allows the
25 defendant to argue that he has a good faith belief in the

1 authenticity of the documents and that negates his intent to
2 deceive or cheat.

3 With respect to the rest of the instruction, the
4 Government did follow the Ninth Circuit cases here. In
5 situations where we did paraphrase, it's simply providing
6 additional context rather than laying out additional language
7 that would confuse the jury.

8 I actually think the defendant's instruction and the
9 Government's instruction are not too far off. And the
10 Government's instruction No. 1 accurately reflects the case law
11 and provides the jurors with the information --

12 THE COURT: I don't perceive there's a real dispute,
13 then.

14 MR. INIGUEZ: I would agree, your Honor, that we're
15 not too far off. I just think it's probably the better
16 practice, if we're using this case law, just to say what the
17 cases say, rather than sort of, you know, elaborating on the
18 paraphrasing --

19 THE COURT: Judge Simon, and elsewhere, used the term
20 "family"?

21 MR. INIGUEZ: Right.

22 THE COURT: What the heck does that mean?

23 MR. INIGUEZ: Saying family, class of documents.

24 THE COURT: Huh?

25 MR. LANGSTON: So I think that is directly from the

1 case law.

2 THE COURT: I know it is. But that doesn't make
3 it -- we've said many times, don't use the appellate opinions
4 for your instructions. And I'm not going to use an expression
5 I don't understand.

6 MR. INIGUEZ: Right.

7 MR. WEXLER: And if I may, your Honor, just to sort
8 of follow up on what Langston said, the Government specifically
9 included the good faith instruction as it regards to intent to
10 defraud within the definitions related to 514 and not in a
11 separate instruction, so as the jury would understand that this
12 definition is specifically related to 514.

13 By giving them a good faith instruction separately,
14 it does increase the chance that the jury will misapply that
15 instruction to other statutes that have also been charged.

16 THE COURT: I'll try my best to keep them separate.

17 MR. INIGUEZ: Well, Judge, and that's why, in mine,
18 what -- I start off by saying is -- for the good faith
19 instruction. And I think it's a little -- you know, to -- to
20 hide the good faith defense within the definition of intent to
21 defraud, that's, I think, my problem. I think we need to pull
22 it out for the jury, and tell them the good faith is a complete
23 defense to a charge of violating Section 514. That makes it
24 clear. It doesn't -- it doesn't muddy anything because it's
25 making clear that it's for that particular charge only. But I

1 think to sort of --

2 THE COURT: As I said, we will make it clear as to
3 which charges we're talking about.

4 MR. LANGSTON: Judge, I just also did want to
5 highlight one particular difference between the Government's
6 proposed instruction and the defendant's proposed instruction
7 is that at the bottom of the Government's proposed instruction
8 No. 1, fictitious instruments include even bogus instruments --

9 THE COURT: Will you speak a little more slowly and
10 clearly.

11 MR. LANGSTON: Yes, your Honor.

12 THE COURT: Because, you see, this is Amanda LeGore,
13 and she's been with me for over 25 years. And she'll frown at
14 you if you go too fast. And the jury will, too.

15 MR. LANGSTON: Yes, your Honor.

16 Include documents that a prudent person might be
17 unlikely to accept as genuine. And I think that is very much
18 an accurate statement of the Ninth Circuit law. We anticipate
19 that the defense in this case may well include something about
20 the fact that because the amounts were for a trillion dollars,
21 no one could accept these as real.

22 And so we think it's important that the jury be
23 instructed that even if a prudent person might be like --
24 unlikely to accept them, provided they bear a resemblance to
25 the -- to actual documents and the defendant having an intent

1 to defraud, that he's still liable under 514.

2 THE COURT: All right. I think that we will come up
3 with a composite, then.

4 And I do pre-instruct the jury to a degree, realizing
5 that these are preliminary instructions. And that I will
6 supplement them later. Repeat them and supplement them.

7 So a lot of times, previously -- well, judges have
8 not even instructed a jury beforehand. And so I want to have
9 them realize what they -- what they have to decide, rather than
10 saying, by the way, after a week, you should have been paying
11 attention to this and this.

12 So it's a vast improvement for them. The -- I looked
13 over your list of witnesses, and you have nine, which is fine.

14 Any particular problem with the witnesses that the
15 Government's going to call?

16 MR. LANGSTON: Your Honor, if I may, one other issue
17 with the jury instructions is defense Instruction No. 6.

18 THE COURT: Yeah.

19 MR. LANGSTON: Defining "void." The Government
20 thinks that instruction is improper.

21 THE COURT: I don't think it's necessary. Void is
22 void.

23 MR. INIGUEZ: Judge, here's the reason we've raised
24 it. I'm sure you've looked at these --

25 THE COURT: Yes, I did.

1 MR. INIGUEZ: Each one of them, on their face, says,
2 "Void where prohibited by law." And I think most people might
3 have an understanding -- a general understanding, a lay
4 understanding what "void" means. But I think to give them the
5 legal understanding of that meaning, I think that would help
6 them in determining what this exactly means on its face.

7 THE COURT: Are you claiming that those are -- have
8 legal effect in this case?

9 MR. INIGUEZ: No. I would say that by using the word
10 "void," indicates that they're null. That they're ineffective
11 legally, where prohibited by law. If the Government's theory
12 is correct, that they're prohibited by law, then they are on
13 their face void, of no legal effect. That's what the documents
14 say on their face. I'm just concerned that a juror is not
15 going to understand the legal meaning of the word "void."

16 THE COURT: Well, what is the legal meaning of this?
17 The fact that you're a notary from some Excalibur, or you've
18 been -- it's nonsense. So I'm not going to worry about it.

19 MR. INIGUEZ: Okay.

20 THE COURT: I appreciate the position you're in.

21 MR. INIGUEZ: Yeah. And, obviously, I'm offering the
22 instruction. I think it goes to the document, so I would ask
23 that it be instructed. But I hear you.

24 THE COURT: Yeah. Anyway, I have said what I've
25 said, I wanted to say.

1 My question was, did you have any problem with the
2 witnesses that they've listed?

3 MR. INIGUEZ: I don't think so. I am not sure -- the
4 initial list was 16, I think.

5 Right, guys?

6 THE COURT: Down to nine.

7 MR. INIGUEZ: So I'm not sure exactly which nine
8 we're talking about now.

9 THE COURT: He gave you a copy of it.

10 MR. INIGUEZ: A new list?

11 MR. WEXLER: Yes. And it's just, for the most part,
12 the custodians that have been excluded. But it will be --

13 THE COURT: We'll --

14 THE CLERK: Do you have a copy of this. You can have
15 that.

16 MR. INIGUEZ: (Handed document.) Oh, yeah. Right,
17 right.

18 THE COURT: It looks innocuous.

19 Now, I haven't played that DVD. Does that have the
20 statements being made by the defendant?

21 MR. WEXLER: From the defendant's exhibits, your
22 Honor?

23 THE COURT: No, I thought -- I -- excuse me. I just
24 got a DVD.

25 THE LAW CLERK: Right here, Judge. That was from the

1 defendants --

2 THE COURT: Oh.

3 MR. INIGUEZ: That was from his website, his YouTube
4 channel.

5 THE COURT: What's in it?

6 MR. INIGUEZ: It's him introducing -- it's the first
7 YouTube presentation that he gives. And it's kind of him
8 explaining what it is that he's doing.

9 THE COURT: Do you know what it is? Did you get a
10 copy of it?

11 MR. LANGSTON: Yes, your Honor.

12 THE COURT: Have you played it?

13 MR. LANGSTON: We haven't played the DVD itself, but
14 we've been to the YouTube channel and watched it.

15 THE COURT: How long is it?

16 MR. INIGUEZ: 20 minutes.

17 MR. LANGSTON: And the entire thing consists of
18 hearsay.

19 THE COURT: Okay. I'll be looking at it.

20 But back to -- you have a cropped version of the
21 defendant making admissions of a party opponent?

22 MR. WEXLER: Yes, your Honor.

23 As we submitted -- I can't remember exactly where we
24 submitted it, but we did list the timestamps during which we're
25 going to play the video. So the jury will only see, in total,

1 I believe it's seven video clips. They total about 20 minutes.

2 THE COURT: Just give me a brief summary of your
3 most-telling admissions that he made.

4 MR. WEXLER: Yes, your Honor.

5 In the videos from -- the video clips from both
6 Orlando and London, the defendant walks a seminar class through
7 the creation of a nonnegotiable bill of exchange, which the
8 defendant is charged with filing --

9 THE COURT: What does he say?

10 MR. WEXLER: He says he doesn't know what any of the
11 words mean. And, in fact, he says, "Which is pretty cool,
12 because if we don't know what they mean, they don't either."
13 And he's referring to the Government and the banks.

14 THE COURT: That's the essence of it?

15 MR. WEXLER: Yes, your Honor.

16 In another part of the clip, he mentions how he came
17 up with the idea of putting a stub on the document because he
18 thought it would make it seem more complete.

19 And so the Government's argument is that he's
20 attempting to make this document appear as legitimate as
21 possible in order to trick someone into actually crediting it.
22 So by adding this stuff --

23 THE COURT: Is he telling the audience that they
24 should do specific acts?

25 MR. WEXLER: Yes. He's telling -- you know, with

1 regards to the sub -- stub, he actually says:

2 You can do this or you can not do it. We haven't
3 had success with it. I thought it would work. So
4 you -- you can try it.

5 In regards to the other aspects of the bill of
6 exchange, he does specifically say:

7 Look, this is where you put your Social Security.
8 Don't put any dashes. Make sure that's just your
9 straight Social Security number. This is where
10 you put this. This is where you put that.

11 He walks them completely through the creation of --

12 THE COURT: Is he telling them then you won't have to
13 file income tax?

14 MR. WEXLER: In those clips he does not address the
15 filing of income taxes.

16 And, your Honor, the Government's clips generally do
17 not go to the 7203 counts. They go to the 514 counts. And
18 most particular, Counts 10 and 13, which is the nonnegotiable
19 bill of exchange the defendant sent to the Treasury.

20 In another, clip -- and I apologize, your Honor. I
21 didn't bring my notes as to the clips, so I'm going off the top
22 of my head.

23 In another clip in San Antonio, he talks at length to
24 his seminar about the concept of wishful intent and how to get
25 around willful intent. And that if you actually intend to do

1 something, you should be judged guilty of that act.

2 In the St. Joseph -- I believe it is -- Missouri,
3 video, he actually tells the seminar that they should juice up
4 the numbers on these documents, and specifically instructs them
5 to lie by saying, "You should put 10 million dollars instead of
6 ten dollars," for --

7 THE COURT: I remember that part.

8 MR. WEXLER: And -- because that's what the Treasury
9 is looking for. They're not looking for a 10 or hundred dollar
10 debt.

11 THE COURT: Okay. This is what I -- are you going
12 to -- who's going to make an opening statement?

13 MR. LANGSTON: I will, your Honor.

14 THE COURT: Okay. What I want you to do is to
15 clearly define in your opening statement the distinction
16 between these two main counts and the elements. I want you to
17 point out, These are the elements you must find for this count,
18 these counts. And these -- these are the elements you must
19 find for these counts.

20 And so the jury will know in their own mind, and
21 state it precisely where you think good faith is relevant and
22 where it is not.

23 MR. WEXLER: And, actually, your Honor, I did find my
24 notes as to the other videos, if you would like me to address
25 the other video clips as well, I can.

1 THE COURT: Just a moment. Let's just do one at a
2 time.

3 MR. WEXLER: Oh, I apologize, your Honor.

4 THE COURT: And he's going to give the opening
5 statement?

6 MR. INIGUEZ: He is, Judge.

7 THE COURT: All right.

8 MR. INIGUEZ: I won't jump there yet, but maybe we
9 can talk about closings when we're further along.

10 THE COURT: Okay. Now, for defense witnesses, is he
11 going to testify then?

12 MR. INIGUEZ: He is.

13 THE COURT: And is there anybody else?

14 MR. INIGUEZ: Well, I gave you the list.

15 THE COURT: I didn't see anybody else.

16 MR. INIGUEZ: Oh, no?

17 He listed the agent, the special agent for the I.R.S.

18 THE COURT: Oh, yeah, I did.

19 MR. INIGUEZ: He, of course, will be cross-examining.

20 But he would like to call -- call the agent, rather than
21 cross-examine --

22 THE COURT: Whatever.

23 MR. INIGUEZ: Yeah.

24 He listed Mr. Wexler as a witness, and gave the
25 reasons. I think he gave a little summary of why.

1 THE COURT: Yeah.

2 MR. INIGUEZ: And he listed the Attorney General for
3 Oregon, Ms. Rosenblum. And I think --

4 THE COURT: I didn't see that.

5 MR. INIGUEZ: Yeah, yeah. So he listed those --
6 those three --

7 THE COURT: I would need an offer of proof as to each
8 one before they'll -- I'll even permit them to be called.

9 MR. INIGUEZ: Okay.

10 THE COURT: But -- there's no prohibition against
11 calling another lawyer, if it's relevant.

12 MR. WEXLER: A couple of conditions, your Honor.

13 THE COURT: Highly frowned upon, but it's not
14 impermissible.

15 MR. WEXLER: There was, in the defendant's filing, a
16 proffer as to each witness, and the Government strongly objects
17 to all three, based on the proffer.

18 First, as Mr. Iniguez stated, Agent Hill will be a
19 Government witness, to the extent that the role of the I.R.S.
20 is relevant. And, actually, Agent Hill won't be the only
21 I.R.S. witness of the Government's. There will be two other
22 I.R.S. employees. The defendant can cross-examine them as to
23 the role of the I.R.S.

24 THE COURT: Sure.

25 MR. WEXLER: Two, the proffer for my testimony is to

1 establish the Providence of the case and to establish that the
2 case is bonded. Also to testify to the issuance of certain
3 bonds on the basis that if those bonds --

4 THE COURT: I don't know what they're talking about.

5 MR. WEXLER: Exactly, your Honor. It's completely
6 irrelevant. I have no personal knowledge of any of that
7 information and --

8 THE COURT: I'll be excluding it.

9 MR. WEXLER: And, finally, the defendant has
10 proffered that Ms. Rosenblum, Attorney General Rosenblum will
11 be called to establish whether the charged statutes are
12 constitutional and, therefore, relevant. Which, as the
13 Government --

14 THE COURT: Not going to happen.

15 MR. WEXLER: Yes, your Honor.

16 THE COURT: She doesn't even have to be -- respond.
17 Nor do you.

18 MR. WEXLER: Thank you, your Honor.

19 THE COURT: All right. Well --

20 MR. WEXLER: And then if your Honor would like to
21 then address the Government -- the defendant also, in addition
22 to the proposed video, proposed three additional exhibits. And
23 the Government would note for the record that, first, the
24 defendant's proposed Exhibit No. 2 is already admitted into
25 evidence as Government's Exhibit 11-17. That is the

1 Treasury -- the Office of International Treasury Control
2 Certificate.

3 THE COURT: Sure.

4 MR. WEXLER: Two, the defendant propose the Exhibit
5 No. 4, which is a -- purports to be a certified record of the
6 state of Delaware as relating to the Internal Revenue Tax and
7 Audit Service, Incorporated, is not the I.R.S. And so that
8 document is entirely irrelevant to this case.

9 And, finally, the statement made in defendant's
10 proposed Exhibit No. 3, which is the United States's answer and
11 claim in diversified metals.

12 THE COURT: Well, I don't know what in the world that
13 is.

14 MR. WEXLER: Well, specifically, your Honor, I
15 believe the defendant is referring to paragraph 4 in that
16 document, which is a pleading by the United States in the case
17 in which it denied the Internal Revenue Service as an agency of
18 the United States Government. It's actually accurate, the --
19 the Internal Revenue Service is an agency of the Department of
20 Treasury. And the Department of Treasury is a department of
21 the United States Government. So to the extent that that's
22 accurate, it's an accurate statement of law. But the function
23 and proper role of the I.R.S. --

24 THE COURT: It's a stupid thing to deny.

25 MR. WEXLER: Yes, your Honor. Yes, your Honor.

1 MR. INIGUEZ: Maybe on that, Judge, if we could
2 stipulate as to the correct statement that Mr. Wexler just
3 made, that may be helpful, I guess.

4 THE COURT: You make it --

5 MR. WEXLER: And I believe that's actually how it's
6 phrased in the Superseding Indictment, your Honor, but I could
7 refer back to that. But it's generally our practice to refer
8 to the I.R.S. as an agency of the department of --

9 THE COURT: You just make that statement in your
10 opening statement.

11 MR. LANGSTON: That the I.R.S. --

12 MR. INIGUEZ: Department of Treasury.

13 THE COURT: But that pleading is not going to be
14 received. None of those will be.

15 MR. WEXLER: So then, your Honor, the only question
16 mark is the defendant's video, which I understand you haven't
17 had a chance to review. Mr. Langston has reviewed it, and we
18 would object to it as entirely self-serving hearsay.

19 THE COURT: Well, we'll take a look at it.

20 It's going to be helpful to the jury to hear what
21 this fella is saying to these audiences in London and around,
22 to get some context to this.

23 I appreciate that his own statements are hearsay
24 under our rule, unless they fall within one of the exceptions:
25 Inconsistent, recent fabrication, identification. They don't

1 fall under those. But, on the other hand, this jury will want
2 to know what is this guy saying out there.

3 MR. INIGUEZ: And, Judge, I think, just to go to that
4 issue, before you look at it, right, we were introducing all of
5 these other statements from all of these other seminars. This
6 is a YouTube video that he presents to the world, as it was.
7 And I think in order to have the completeness of his statements
8 be known to the jury, I think it's important for this to be
9 heard. And, again, it does go to that sincerely held belief
10 that he has. So I think it is relevant and important for them
11 to hear it all.

12 MR. WEXLER: To that effect, your Honor -- I'm sorry.
13 Did you want to --

14 MR. LANGSTON: Yeah. And, your Honor, I should note
15 that -- so this is not a speech that he gave at the seminars.
16 This is an entirely separate set of talking points that he
17 made --

18 THE COURT: Where did he make them?

19 MR. LANGSTON: -- on his YouTube channel.

20 He is literally speaking to the camera in his
21 apartment. It doesn't speak to any of the documents contained
22 in the 514 counts.

23 THE COURT: What?

24 MR. INIGUEZ: He kind of -- what it is -- he says,
25 "This is the first time I'm doing this. My first YouTube."

1 And he's trying to explain why he's doing it.

2 THE COURT: I'll look at it. It sounds awfully
3 self-serving. The point now -- but I was hoping to have a
4 sniglet of him -- what he's saying to a live audience in a
5 hotel environment.

6 MR. WEXLER: Well, your Honor, to the extent that the
7 Government's video -- they've all been taken at seminars and in
8 a live environment.

9 THE COURT: I think that would probably do it.

10 MR. WEXLER: And the other thing I would say about
11 the YouTube video is that the defendant can get on the stand
12 and apparently will get on the stand and say all of the things
13 that are in his video and simply say that I put up a video on
14 YouTube saying that. The video itself is out-of-court hearsay
15 and should not be available.

16 THE COURT: Well, after he testifies, we'll see if it
17 needs any -- if it's simply cumulative, it won't happen.

18 MR. WEXLER: Thank you.

19 THE COURT: Okay. Anything else?

20 MR. WEXLER: Yes, your Honor. I apologize.

21 And these are --

22 THE COURT: Don't apologize. We're here to -- this
23 is hard work, when we're dealing with a person who wants to
24 represent themselves, who have no legal training. They are all
25 over the block. And so counsel's got -- he's trying a case

1 with his arms tied together.

2 Anyway, go ahead.

3 MR. WEXLER: So, your Honor, I have -- the Government
4 has a few points that we could either resolve today or we could
5 resolve tomorrow.

6 THE COURT: Better do it right now.

7 MR. WEXLER: So the first is the Government intends
8 to introduce via judicial notice under Federal Rule of Evidence
9 201, a copy of 18 USC 514 that is more complete than what is
10 contained in the jury instruction. And, specifically, the
11 reason why is that 18 USC 514(b) refers to definitions
12 contained in 18 USC 513.

13 And a copy of 18 USC 513 was found on the defendant's
14 computer and has been admitted as Government's Exhibit -- part
15 of Government's Exhibit 11-8.

16 What the Government would like to do is to establish,
17 one, that the defendant knew of 18 USC 514. And the Government
18 will do that through an alert that was found on the defendant's
19 computer specifically referencing 18 U.S.C. 514. Show
20 18 US 514 where it references 513. Make it clear that 514 was
21 not on the defendant's computer but 513 was.

22 THE COURT: Can't you save that for your
23 cross-examination of him?

24 MR. WEXLER: Yes, except the defendant could always
25 decide that he doesn't want to --

1 THE COURT: Well, I don't want to give an exhibit of
2 what the law is. It's my job to do that via instruction. I
3 think that you can do that when he testifies. And if he
4 denounces it, then you can make your offer.

5 MR. WEXLER: Very well, your Honor. The second item
6 is while --

7 THE COURT: And there's nothing that prevents you
8 from blowing that up, any portion of my instructions. Both
9 sides can blow up and -- in your closing -- even in your
10 opening statement, but preferably in your closing argument.

11 MR. WEXLER: Yes, your Honor. And I do intend to do
12 that. It's just that this particular part of 514, since it's
13 not relevant to the jury's deliberations, is not part of your
14 instruction.

15 THE COURT: Well, you do it in your --

16 MR. WEXLER: I think cross-examination will work,
17 your Honor.

18 THE COURT: If it doesn't, you can do it in your
19 closing argument.

20 MR. WEXLER: Thank you.

21 THE COURT: And perhaps in my closing instructions.

22 MR. WEXLER: The other two items, the Government --
23 as you may recall, your Honor -- agreed to withdraw
24 Government's Exhibit 11-9 and 11-10 and simply refer to them in
25 summary.

1 In going back through our evidence, however, there
2 are two specific documents in 11-10 that are highly relevant to
3 other documents that have already been admitted.

4 THE COURT: Is that part of the summary?

5 MR. WEXLER: They're part of the summary, your Honor,
6 but the content is very specific.

7 THE COURT: Well, if they have independent relevance,
8 that's fine. The fact that he has a summary doesn't prohibit
9 you from using specifics, obviously.

10 MR. WEXLER: Yes, your Honor.

11 It's just that they are not currently admitted
12 because they were excluded as part of 11-10.

13 THE COURT: Oh, I see.

14 MR. WEXLER: So the Government would simply suggest
15 that they be admitted as Government's Exhibits 11-20 and '21.
16 And we could either do that at the --

17 THE COURT: Identify them more clearly, other than
18 number.

19 MR. WEXLER: Yes, your Honor.

20 They are in Exhibit 11-10, page 34, which is a
21 template of an international bill of exchange for credit to
22 Metro Grant Holding. That is the same IBOE that's charged in
23 Counts 10, 11, 8, and 9.

24 And then also 11-10, page 139, which is an IBOE
25 template to -- and someone known as Father George Abdulrahim

1 Mouselli.

2 THE COURT: Spell that.

3 MR. WEXLER: I would have to do it off the top of my
4 head, your Honor. But I believe --

5 THE COURT: Well, that's good enough. Phonetically
6 is fine.

7 MR. WEXLER: Thank you.

8 And that relates directly to an item that's been
9 admitted as Government's Exhibit 11-8, a joint venture
10 agreement that proposes the defendant make an IBOE.

11 THE COURT: When I said you didn't have to spell it,
12 but would you please do it phonetically.

13 MR. WEXLER: Oh, oh. I'm sorry, your Honor.

14 THE COURT: For Amanda.

15 MR. WEXLER: It's Father George Abdulrahim Mouselli.
16 Is that good?

17 THE COURT: Got it?

18 THE COURT REPORTER: (Nods head.)

19 MR. WEXLER: And so, your Honor, those two exhibits
20 are what the Government would propose as 11-20 and 11-21.

21 THE COURT: Okay. There is no objection. They'll be
22 received.

23 MR. WEXLER: And then the remainder are just
24 housekeeping items, your Honor.

25 The first is Kristin Ellinger, who is the revenue

1 agent in the Government's case, as noticed in our trial brief
2 and I believe in our witness summary.

3 Ms. Emminger will be testifying last because she is
4 testifying to certain tax implications of the defendant's
5 conduct, and she must take into account the entirety of the
6 admitted testimony when doing that.

7 THE COURT: Fine.

8 MR. WEXLER: Draft schedules have already been
9 provided to the defendant. But before Ms. Emminger testifies,
10 the Government would ask that we take a break, so that
11 Ms. Emminger can actually finalize --

12 THE COURT: Just alert me when that happens.

13 MR. WEXLER: Yes, your Honor.

14 The other item -- well, a second item is that, as the
15 Government has informed and the Court has seen, Ms. Becker, the
16 Government's --

17 THE COURT: Yeah.

18 MR. WEXLER: -- witness, is not in good health and
19 cannot sustain remaining in court --

20 THE COURT: Do you really need her?

21 MR. WEXLER: Yes, your Honor. Absent a stipulation
22 to the deposition --

23 THE COURT: Well, it would appear that she's not in
24 good health, and this would be former testimony?

25 MR. WEXLER: Yes, your Honor.

1 THE COURT: Subject to -- prior testimony under oath,
2 subject to examination?

3 MR. WEXLER: Yes, your Honor.

4 THE COURT: It will be admitted on that basis. She
5 doesn't need to appear.

6 MR. WEXLER: So to that extent, your Honor, would the
7 Court allow the Government to play the video of her testimony
8 for the Court?

9 THE COURT: Either way.

10 MR. WEXLER: Okay.

11 MR. INIGUEZ: Judge, Mr. Shrout would -- when he was
12 here the other day, he did object to that.

13 My understanding -- you know, there's this
14 relationship among these folks. Right? The gal that you
15 allowed to stay in the courtroom, Ms. Bekken, Patricia, is
16 really good friends with Ms. Becker. And so in speaking with
17 Ms. Becker, she understands that actually right now Ms. Becker
18 is doing better than she was back when we did the deposition.

19 I understand that she would prefer not to come to
20 Court, but she is certainly local. She's certainly in good
21 enough health where she could appear. I don't think she meets
22 the standards for an unavailable witness.

23 THE COURT: Do you want her here in person?

24 MR. INIGUEZ: Mr. Shrout does want her here in
25 person.

1 MR. WEXLER: And the Government is fine with that,
2 your Honor, and generally would agree. We have not met with
3 Ms. Becker since she testified --

4 THE COURT: Does -- she has a medical -- documented
5 medical disability, of course, and it's unrebutted?

6 We will go with her testimony under 804. But,
7 otherwise, she'll -- if she has to go to the bathroom, we have
8 a facility within steps.

9 MR. WEXLER: Yes.

10 THE COURT: Your call.

11 MR. WEXLER: Yes, your Honor.

12 And the reason I --

13 THE COURT: I mean, it's my call, but I'll adhere to
14 the information that I get.

15 MR. WEXLER: Thank you, your Honor.

16 And the reason I bring it up is simply that the
17 Government intends for Ms. Becker to be our fifth witness, and
18 it will mark the transition in the Government's case from the
19 514 statutes to the 7203 statutes.

20 THE COURT: Perfect.

21 MR. WEXLER: We believe there is a possibility that
22 we could get to Ms. Becker's testimony late in the day on
23 Tuesday, however -- which is tomorrow.

24 THE COURT: I doubt it. I doubt it.

25 MR. WEXLER: Well, the Government has instructed

1 Ms. Becker, because of her health, to just show up Wednesday
2 morning.

3 THE COURT: Perfect.

4 MR. WEXLER: And the Government would simply ask that
5 if we get to Ms. Becker's testimony, that the Court adjourn for
6 the day and take up the next morning. The Government will only
7 have about two hours total.

8 THE COURT: As long as we get through before next
9 week. I've got a commitment for the following Monday.

10 But everything's moving much faster.

11 MR. WEXLER: Thank you, your Honor.

12 THE COURT: So on that score, do you think we'll be
13 through with your case by Wednesday?

14 MR. WEXLER: Yes, your Honor.

15 I anticipate, based on our witness prep -- of course,
16 we don't know the extent of cross-examination. But we do
17 believe that we will --

18 MR. INIGUEZ: Neither do I.

19 MR. WEXLER: But we do believe that we will be
20 closing our case-in-chief sometime Wednesday, possibly
21 Wednesday morning.

22 THE COURT: And how long the defense will take is how
23 long it will take.

24 MR. INIGUEZ: Well, your Honor, given the anticipated
25 rulings on his other witnesses, it shouldn't be -- should not

1 take very long.

2 Of course, the Government is suggesting that rather
3 than do things like a 20-minute video that he be allowed to
4 present that. It may take -- may take longer, but I can't
5 imagine it's going to be --

6 THE COURT: Fine.

7 MR. INIGUEZ: -- past Thursday.

8 THE COURT: Perfect.

9 MR. WEXLER: Thank you, your Honor.

10 And then, finally, the Court docket says that the
11 proceeding will begin tomorrow at 9:00 a.m. Just wanted to
12 confirm that time and also confirm the Court's expected daily
13 calendar, when --

14 THE COURT: Okay. I -- I -- as I told you, I go down
15 and excuse the jurors who can't serve.

16 We have 35 jurors coming in. We've got ten
17 peremptories for the defense and six for the Government, and I
18 hope you don't use anywhere near that number. And -- because
19 I -- but I think I can tell the jury safely that this case will
20 be complete -- completed no later than Friday. And that if we
21 finish earlier, they'll be happier.

22 But my hours are 9:00 a.m., morning. Break at noon.
23 Pick up at 1:15 to 1:30. And go until 4:30.

24 MS. BECKERMAN: We have an 11:30 one day. We have
25 11:30 hearings on one day.

1 THE COURT: Yeah. Well, they'll be fast.

2 THE CLERK: Yeah. But, I mean, we'll be breaking.
3 Just so they'll know we'll be breaking early that day.

4 MR. WEXLER: What day is that?

5 THE CLERK: I have that list right here for him.
6 The 9:30s are on the 19th.

7 MR. WEXLER: The 11:30s?

8 THE CLERK: The 11:30s, I mean. Yeah. We have two
9 on the 19th. Um-hmm.

10 THE COURT: Okay. Well, you have all done a great
11 job to narrow these issues down, and we'll take it from there.

12 MR. WEXLER: Thank you, your Honor.

13 THE COURT: Anything else?

14 MR. LANGSTON: Not from the people -- or not from the
15 Government.

16 MR. INIGUEZ: You had asked at the beginning, Judge,
17 about their witnesses. I don't see any problem with those nine
18 witnesses.

19 THE COURT: Thank you.

20 MR. LANGSTON: Was there an issue with the defense
21 closing?

22 MR. INIGUEZ: Oh, I wanted to raise the issue of the
23 defense closing and the possibility that Mr. Shrout be allowed
24 to do the majority of that but I be allowed to do a brief
25 closing as well.

1 THE COURT: It would be welcome.

2 MR. INIGUEZ: Thank you.

3 THE COURT: Anything else for the good of the order?

4 MR. INIGUEZ: No, Judge, not for the defense.

5 MR. LANGSTON: No, your Honor.

6 THE COURT: Off the record.

7 (Conclusion of proceedings.)

8

9 --oOo--

10

11 I certify, by signing below, that the foregoing is a correct
12 stenographic transcript of the oral proceedings had in the
13 above-entitled matter this 8th day of May, 2017. A transcript
14 without an original signature or conformed signature is not
15 certified. I further certify that the transcript fees and
16 format comply with those prescribed by the Court and the
17 Judicial Conference of the United States.

18

/S/ Amanda M. LeGore

19

20 AMANDA M. LeGORE, CSR, RDR, CRR, FCRR, CE
21 CSR No. 15-0433 EXP: 3-31-2018

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